



Review of Tobacco Control Legislation
Department of Health
Australian Government

14 March 2019

Re: Submission on review of tobacco control legislation

Thank you for providing the opportunity for the Society of Research on Nicotine and Tobacco – Oceania Chapter (SRNT-O) to provide input on the review of Commonwealth tobacco control legislation.

SRNT is the only professional association dedicated exclusively to the support of researchers, academics, treatment professionals, government employees, and the many others working across disciplines in the field of nicotine and tobacco research. SRNT was established in 1994 with the goal of stimulating the generation and dissemination of new knowledge concerning nicotine in all its manifestations – from molecular to societal. Internationally, SRNT has members in more than 40 countries and in 2018 the Oceania Chapter was established. SRNT disseminates cutting edge research in nicotine and tobacco through the scientific journal, *Nicotine & Tobacco Research*, published by Oxford University Press, as well as an annual scientific conference.

In response to the consultation questions raised by the Department, SRNT-O provides the following submission and recommendations.

What is working well in relation to the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Advertising Prohibition Regulation 1993*?

Australia is recognised as having some of the most comprehensive tobacco advertising restrictions in the world. The *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Advertising Prohibition Regulation 1993* have virtually eliminated most forms of tobacco advertising in Australia. While it is difficult to quantify the contribution of individual components of a comprehensive tobacco control program to the reduction in smoking prevalence that Australia has achieved, it is clear that Australian tobacco control programs introduced since the 1980s have led to very significant declines in smoking prevalence over the last three decades.

One challenge in the contemporary tobacco control climate is worldwide internet, new media and advertising (Dunlop, Freeman, & Perez, 2016; Freeman, 2012). While the *Tobacco Advertising Prohibition Act 1992* does prohibit internet advertising that originates in Australia, stamping out the worldwide flow of tobacco promotion is difficult. Australia should keep abreast of, and contribute to efforts in this regard. For example, the FCTC has considered this

issue in their Report “Measures that would contribute to the elimination of cross-border advertising, promotion and sponsorship.” (Convention Secretariat of the World Health Organisation Framework Convention on Tobacco Control, 2010)

Do you consider the *Tobacco Advertising Prohibition Regulation 1993* simple, clear and easy to read? If not, which elements of the regulation pose particular challenges, and what changes would you suggest?

There has been some uncertainty about whether e-cigarettes, also known as nicotine vaporisers, vaping products, personal vaporizers, or electronic nicotine delivery system (ENDS) are covered by this legislation. The definition of tobacco product currently included in the legislation does not encompass these products. Some have argued that these existing regulations could be applied to e-cigarette promotion because e-cigarette advertising can be viewed as being “intended to promote smoking” (Section 9.1.a). However, this is debated and may be difficult to prove. Furthermore, research conducted as part of the International Tobacco Control (ITC) Policy Evaluation Study suggested that exposure to e-cigarette advertising was associated with disapproval of smoking rather than encouragement to smoke (Nagelhout et al., 2016). Improved clarity regarding these products would assist with interpretation.

What, if any, changes could be made to the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Advertising Prohibition Regulation 1993*?

There is concern amongst the public health community that some vaping products are being marketed in ways that could appeal to young people. SRNT-Oceania believes that restrictions on advertising of e-cigarettes would be advantageous, especially for channels that children or young people are likely to be exposed to, such as broadcast media or billboards. While states and territories have applied relevant tobacco legislation to advertising of e-cigarettes, this is not consistent across states, which may produce confusion and inadvertent breaches of legislative requirements. For consistency, we recommend clarity by introducing legislative requirements about the advertising of e-cigarettes to the Tobacco Advertising Prohibition Act 1992. There is a range of views regarding what advertising and promotion restrictions are appropriate for e-cigarette products, since these products can be used for smoking cessation purposes. Some nicotine and tobacco researchers believe that some exemptions to blanket advertising bans could be beneficial as they may encourage long-term adult smokers to switch to a lower risk product. For example, advertising material that is clearly targeted at adult smokers and is restricted to channels that reduce the risk of children and non-smokers being exposed, such as cigarette pack inserts, or printed material in tobacconist, vaping product or other adult product stores. Further research to inform the most appropriate approach to marketing restrictions for this product in Australia is needed, however a prudent option would be to draft any legislative amendment such that it is possible to enforce different restrictions on these products compared to smoked tobacco products for greater flexibility.

Are there any studies that would support the measures that you are suggesting?

Nagelhout, G. E., Heijndijk, S. M., Cummings, K. M., Willemsen, M. C., van den Putte, B., Heckman, B. W., . . . Borland, R. (2016). E-cigarette advertisements, and associations with the use of e-cigarettes and disapproval or quitting of smoking: Findings from the International Tobacco Control (ITC) Netherlands Survey. *International Journal of Drug Policy*, 29, 73-79. doi:<https://doi.org/10.1016/j.drugpo.2015.12.015>

Do you consider the *Tobacco Advertising Prohibition Regulation 1993* (or provisions within) redundant, unnecessary or otherwise not fit-for-purpose?

SRNT-Oceania supports the *Tobacco Advertising Prohibition Regulation 1993* and believe it is fit for purpose, but could be improved.

What is working well in relation to the *Tobacco Plain Packaging Act 2011* and the *Tobacco Plain Packaging Regulations 2011*?

Tobacco Plain Packaging has had a number of positive public health outcomes, listed below and supported by the literature:

- Increase in calls to the Quitline (Young et al., 2014)
- Reduction in sales of tobacco products following implementation
- Increased impact of graphic health warnings (Wakefield et al., 2015; Yong et al., 2016)
- Reduction in the appeal of tobacco products (Balmford, Borland, & Yong, 2016; Wakefield et al., 2015; White, Williams, & Wakefield, 2015; Zacher et al., 2014)
- A reduction in the ability of tobacco packaging to mislead consumers about the relative harmfulness of different cigarette variants (Maddox, Durkin, & Lovett, 2016).

Some populations have a much higher prevalence of smoking. So it is reassuring that there is also some evidence of the impact of plain packaging in these populations, with increased impact of graphic health warnings (Nicholson et al., 2017; Nicholson et al., 2015) and decreased misperceptions that cigarettes differ in harm (Maddox et al., 2016) among Aboriginal and Torres Strait Islander smokers.

SRNT-Oceania supports plain packaging legislation for tobacco products and believes that it has generally been successful in meeting its aim. However, in section 8 below, we note some changes that may strengthen the legislation and reduce the ability of tobacco companies to circumvent the goals of tobacco plain packaging.

What, if any, changes could be made to the *Tobacco Plain Packaging Act 2011* and the *Tobacco Plain Packaging Regulations 2011*?

There is evidence that tobacco companies continue to modify their products or to introduce new products that may increase appeal to smokers, while still operating within the legislative requirements of the *Tobacco Plain Packaging Act 2011*. These have been outlined by Scollo et al (2018), who have been monitoring tobacco product developments since the introduction of plain packaging in Australia. These include:

- Creating new or non-standard pack sizes to differentiate certain brand variants, or increasing pack sizes to portray “bonus” cigarettes.
- The introduction of novel filter designs and their on-pack descriptors such as “Taste Flow Filter” and “Firmer Feel Filter”
- Cigarettes that contain menthol capsules within the filter, and release flavours when the filter is squeezed. This is particularly concerning as menthol cigarettes appeal to young people, and the interactive component of squeezing the filter to release a flavour is likely to also appeal to young people. Research conducted as part of the International Tobacco Control (ITC) Policy Evaluation Study found that among adults, preference for capsule-containing brands is increasing over time (from 0.1% in 2012 to 3% in 2014 in Australia) (Thrasher et al., 2016). The study also found that younger age was associated with preference for cigarette containing capsules. Smokers who preferred capsule brands in Australia reported that they were “smoother” and provided greater satisfaction compared to other brands (Thrasher et al., 2016).
- The use of evocative product variant names that are associated with quality e.g., “Optimum” or “Deluxe”.
- The use of evocative product variant names that are associated with refreshment, or summer, or other pleasant associations such as “Winfield Summer Crush Rush”, “Longbeach Fresh Coast.” Evocative brand names have been shown to increase the appeal of brands in an experimental study (Hoek, Gendall, Eckert, Kemper, & Louviere, 2016).

Based on these studies, SRNT-Oceania recommends that:

- 1) The Commonwealth consider amending the legislation to standardise the number of cigarettes that are able to be sold in a pack. This would reduce the ability of tobacco companies to imply value for money or “bonus” cigarettes. In the USA, a pack of cigarettes is standardised to 20 cigarettes. In New Zealand, the only pack sizes that can be sold are 20 or 25 cigarettes.
- 2) The Commonwealth consider banning or limiting the use of appealing and evocative brand variant names.

Another way to strengthen plain packaging legislation is to mandate the appearance of the cigarette sticks. Research shows that cigarette stick design influences smokers perceptions of cigarette attractiveness and quality (Borland & Savvas, 2013). Research on “dissuasive sticks” shows that design features including colour and graphics representing minutes of life lost can reduce the appeal of cigarettes and increase perceptions of harmfulness in adults and young people (Hoek, Gendall, Eckert, & Louviere, 2016; Hoek & Robertson, 2015; Lund & Scheffels, 2018; MacKintosh, Ford, Hastings, Moodie, & Gallopel-Morvan, 2016). We recommend that:

- 3) The Commonwealth consider mandating the appearance of cigarettes themselves, based on design features which have been shown to reduce appeal in experimental studies.

Continued research and development on the most effective pack health warnings are warranted. Research from the ITC-4 Country Survey, which includes data from Australia, shows that package health warnings are effective, but their impact declines over time (Li et al., 2015). This may be due to decreasing attention, rather than a lessening of the impact of the message itself (Anshari et al., 2018). We recommend that:

- 4) Further research should aim to identify design features that increase smokers' attention to warning labels (e.g., size, colour).
- 5) New pack warnings are introduced to reinvigorate this important intervention.

Lastly, the mandatory addition of cigarette packaging inserts which contain cessation advice has been implemented in Canada. Examples are provided below.



Research from Canada shows that around one third of smokers had read the inserts at least once during the last month (Osman et al., 2014). In addition, the same study found that those who had read the inserts on multiple occasions over a month were more likely to make a quit attempt compared to those who did not read the inserts. Qualitative research from the UK that presented smokers with similar inserts found that smokers appreciated the positive messages, and some thought they would help to encourage quit attempts (Moodie, 2018). We recommend that, to complement pack warnings:

- 6) The Commonwealth consider introducing mandatory cigarette pack inserts that contain cessation advice and positive images that support quitting smoking.

Are there any studies that would support the measures that you are suggesting?

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What are the benefits to you associated with the current regulatory arrangements?

The current legislation on tobacco advertising and plain packaging provide a nationally consistent set of regulations which have been very effective in prohibiting the advertising and promotion of tobacco in Australia.

Are there any other measures for tobacco control regulation that you think the Australian Government should consider and prioritise?

As the opportunity for tobacco companies to advertise using traditional means of public broadcasting and packaging has diminished, they have moved to develop novel features of the product itself. Features such as filter design and menthol pods are not covered by plain

packaging or advertising restrictions, but are designed to make cigarettes more appealing to current or potential smokers. Filter ventilation also conveys misleading impressions of lower risk to smokers as does the presence of a “filter”. There is evidence that cellulose acetate filters may not reduce risk, but they are designed to convey the impression of filtering out harmful constituents, which can provide false reassurance to smokers. Some states have prohibited certain types of products, such as fruit and confectionary flavoured cigarettes, however for consistency we recommend that the Commonwealth consider national legislation that would regulate the product features of tobacco products. This would be an important contribution to meeting Australia’s obligations under the Articles 9 and 10 of the FCTC. Article 9 relates to the regulation of the contents of tobacco products. Article 10 relates to the regulation of tobacco product disclosures. There is an urgent need to develop more rigorous product standards for tobacco products to ensure consumers are not misled by features that convey lower risk. These should include banning filter ventilation as a minimum and potentially banning cigarette filters completely. Research on the risks and benefits of this approach should be prioritised.

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